

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7063 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes

3 to 5 - No

KALIDAS N MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR MUKUND M DESAI for Petitioners (Absent)

M/S PATEL ADVOCATES for Respondents Nos.1
and 3 (Absent)

MR DU SHAH for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/12/97

ORAL JUDGEMENT (Per: C.K.Thakkar,J.)

This petition is filed by the petitioner for an appropriate writ, order or direction quashing and setting aside the order passed by the Officer on Special Duty, Land Acquisition (III), Ahmedabad, by which an application of the petitioner to make reference came to

be rejected on the ground that it was barred by limitation.

.RS 2

#. Few relevant facts which are necessary may now be stated. It is the case of the petitioner that he is resident of Village Metoda, Lodhika Taluka, District Rajkot. Some land was acquired under the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). A notification under Sec.4 was published on November 10, 1988 whereas notification under Sec.6 was published on August 31, 1989. The petitioner submitted his claim. According to him, he was entitled to get atleast Rs.120/- per sq.mtr. The Land Acquisition Officer passed an award which was not acceptable to the petitioner. He, therefore, made an application to refer the matter to a competent court under Sec.18 of the Act. When the said application was placed before respondent No.3, an objection was raised that the application was not submitted within the stipulated period of six weeks and hence, it was barred by limitation. A notice was, therefore, issued to the petitioner to show cause as to why his application should not be rejected on the ground of limitation. The petitioner submitted his reply stating therein that he was not aware of the award. It was stated that in pursuance of intimation given by respondent No.3 on September 6, 1991, the petitioner remained present in the office of respondent No.3 on September 18, 1991 at the office of Metoda Gram Panchayat. On that day, award was not declared and he was told that it would be declared later on. On the next day, i.e. on September 19, 1991, when he remained present, he was informed that the award was already passed and the petitioner was awarded Rs.8/- per sq.mtr. The petitioner immediately applied for certified copy of the award which was received by him on February 26, 1992 and he made an application in March, 1992 but was rejected on the ground of limitation.

#. In the impugned order, dated October 14, 1992, it was mentioned that the award was declared on September 19, 1991 whereas the application was made in March, 1992 which was received by the office of respondent No.3 on March 31, 1992. A notice was, therefore, issued and on being satisfied that it was barred by limitation, the application was rejected. It was also stated that when the award was declared at the Gram Panchayat office of Metoda, the petitioner was present and he was accordingly informed about the declaration of award as also about the legal provision as to whether the petitioner wanted to get the matter referred to a competent court. Since nothing was done within the stipulated period, the prayer

to refer the matter under Sec.18(2) of the Act could not be granted and was rejected.

#. The case of the petitioner is that as soon as he came to know that the award was made by the Land Acquisition Officer, he applied for a certified copy and after receiving it, within the stipulated period, he made an application and there was an error apparent on the face of the record on the part of respondent No.3 in rejecting the application on the ground of limitation.

#. In this connection, it may be necessary to refer to a decision of the Hon'ble Supreme Court of India in Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer and another, AIR 1961 S.C. 1500. Considering the scope of provisions of sub-sec(2) of Sec.18 read that proviso, their Lordships held that "date of the Collector's award" must be interpreted so as to mean that such date must be a date of award either communicated to or is known by the party whether actually or constructively. It may not be unreasonable to construe the words from the date of the Collector's award in proviso to Sec.18 in a mechanical way as a right to get the matter referred to a competent court which is of a statutory nature and that the award declared by the Land Acquisition Officer is really an offer made by him, the party has right to get the said matter decided in reference. In these circumstances, it is necessary that he must be made aware of the grounds on which the claim put forward by the owner is rejected. Unless the grounds are made known to the owner, he would not be in a position to challenge the award made by the Land Acquisition Officer. The ratio laid down in the case of Raja Harish Chandra Raj Singh was reiterated by the Supreme Court in State of Punjab Vs. Mst. Qaisar Jehan Begum and another, AIR 1963 S.C. 1604 wherein it was observed that the knowledge of the award did not mean the knowledge of the fact that the award has been made. The knowledge must relate to the essential contents of the award which must be made known either actually or constructively.

#. Following the above two decisions, a Division Bench of this Court in Rasulkhanji Sardar Mohamad Khanji Vs. H.P. Rathod, 3rd Special Land Acquisition Officer, Ahmedabad and another (1975) 16 GLR 911 held that there can be no valid notice under sub-sec(2) of Sec.12 until the essential contents of the award were brought home to the parties affected by actually communicating the award. When the aggrieved party applies for a copy of the award and the said copy is supplied to him obviously within the

stipulated period, he can file an application and such application cannot be rejected on the ground of limitation. A similar view is taken by the Supreme Court very recently in Tota Ram Vs. State of U.P. and others, (1997) 6 SCC 280.

#. In view of the above legal position, in our opinion, the Land Acquisition Officer has committed an error of law in rejecting the application of the petitioner on the ground of limitation. Hence, this petition deserves to be allowed and is accordingly allowed. The order passed by the Officer on Special Duty, Land Acquisition (III), Ahmedabad, on October 14, 1992 is quashed and set aside and it is directed that Special Land Acquisition Officer will refer the matter in accordance with law to a competent Court. Since the matter is old, the respondent No.3 will refer the matter as expeditiously as possible and the competent court will also decide the same expeditiously. In the facts and circumstances of the case, no order as to costs.

(C.K.Thakkar, J.)

16-12-1997 (R.P.Dholakia, J.)
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